Application No. 09/849448 (Docket: DT.0104)
37 CFR 1.111 Amendment dated 09/28/2005
Reply to Office Action of 06/28/2005

AMENDMENTS TO THE DRAWINGS

The attached replacement sheets of drawings include changes to Figures 1-22. These sheets, which include Figures 1-222, replace the original sheets including Figures 1-22. Figures 1-22 have been redrawn by a competent draftsperson as advised.

Attachment: Replacement Sheets

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REMARKS/ARGUMENTS

In the Office Action, the Examiner noted that claims 1-30 are pending in the application. The Examiner additionally stated that claims 1-30 are rejected. By this amendment, claims 1 and 18 have been amended. Hence, claims 1-30 are pending in the application.

Applicant hereby requests further examination and reconsideration of the application, in view of the foregoing amendments.

Information Disclosure Statement

The Examiner noted that the information disclosure statement filed September 2, 2003 fails to comply with the provisions of 37 CFR 1.97, 1.98 and MPEP § 609 because a document (U.S. Patent 6,025,686 - Fernandez et al - 5/18/2000) does not exist. The Examiner suggested that perhaps the applicant intended U.S. Patent 6,052,686 - Fernandez et al - 4/18/2000. The Examiner stated that the reference to U.S. Patent 6,025,686 has been placed in the application file, but the information referred to therein has not been considered as to the merits and Applicant is advised that the date of any re-submission of any item of information contained in this information disclosure statement or the submission of any missing element(s) will be the date of submission for purposes of determining compliance with the requirements based on the time of filing the statement, including all certification requirements for statements under 37 CFR 1.97(e).

Applicant responds that indeed the citation should have been U.S. Patent 6052686. The '686 reference was submitted in the Information Disclosure Statement signed off by the Examiner on 05/20/2005. There is no need to retain the reference to U.S. Patent 6025686 in that a typographical mistake resulted in its submission in the 09/02/2003 submittal.

In the Drawings

The Examiner required new corrected drawings (Figures 6-38) in compliance with 37 CFR 1.121(d). Applicant responds that in the instant application, there are only 22 figures, so it is inferred that the Examiner has confused the instant application with another similar application. In any event, Applicant submits herewith replacement drawing sheets for Figures 1-22. Accordingly, it is requested that the objections to the drawings be withdrawn.

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In the Specification

The Examiner also objected to the disclosure because of the following informality: the application "Interface For Merchandise Promotion Optimization" has serial number 09/849,616 and this serial number is missing in the specification on page 1 (line 2). By this response, paragraph [0001] of the specification has been amended to provide the required serial number.

The Examiner also objected to the specification because the use of the trademarks (e.g., paragraph 48, lines 11-12) has been noted in this application. The Examiner stated that they should be capitalized wherever they appear and be accompanied by the generic terminology and that all subsequent recitations are also rejected. The Examiner further noted that although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner that might adversely affect their validity as trademarks. Appropriate correction was required.

In response, Applicant has searched the application for trademark usage and has amended paragraphs [0046], [0047], [0056], [0058], and [0091] to correct the stated deficiencies.

Applicant has additionally amended the specification to secure a substantial correspondence between the claims amended herein and the remainder of the specification. No new matter is presented.

In view of the above-noted amendments, it is respectfully requested that the objections to the specification be withdrawn.

In the Claims

Rejections Under 35 U.S.C. §112

The Examiner rejected claims 9 and 26 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention. The Examiner noted that Claims 9 and 26 contain the trademark/trade name JAVA™. It was asserted that where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second

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paragraph and that the claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product. The Examiner further wrote that a trademark or trade name is used to identify a source of goods, and not the goods themselves. Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or trade name. The Examiner moreover stated that in the present case, the trademark/trade name is used to identify/describe applets and, accordingly, the identification/description is indefinite. The Examiner suggested that, to overcome these rejections, the claims be amended to remove the trademark (JAVA™) and leave the appropriate generic name (applets).

By this paper, claims 9 and 26 have been amended as suggested above. Accordingly, it is respectfully requested that the rejections be withdrawn.

Double Patenting Rejections
The Examiner issued rejections of claims 1-30 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-35 of co-pending application 09/849,621. The Examiner further remarked that the rejections are provisional since the conflicting claims have not been patented.

Applicant respectfully traverses and suggests that the above rejections are improper because the Examiner provided no reasons whatsoever for the rejections of claims 1-30 over claims 1-35 of co-pending application 09/849,621. Accordingly, it is respectfully requested that the rejections of claims 1-30 be withdrawn. It is also noted that, should this issue become ripe, both the instant application and co-pending application 09/849,621 are commonly assigned, and that Applicant will respond in such a manner as to forward prosecution of the instant application.

The Examiner also issued rejections of claims 1-30 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims drawn from U.S. Patent 6,553,352 (Delurgio). In response, Applicant provides herewith a terminal disclaimer to obviate a double patenting rejection over a prior patent that disclaims, except as provided therein, the terminal part of the statutory term of any patent granted on the instant application, which would extend beyond the expiration date of the full

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statutory term defined in 35 U.S.C. 154 to 156 and 173, as presently shortened by any terminal disclaimer, of prior Patent No.6,553,352 (Docket: DT.0103). Consequently, Applicant requests that the rejections of claims 1-30 be withdrawn.

Rejections Under 35 U.S.C. §103(a)

The Examiner rejected claims 1-12 and 18-27 under 35 U.S.C. 103(a) as being unpatentable over Ouimet (U.S. Patent 6,094,641) in view of Morgan (U.S. Patent 5,799,286). Applicant respectfully traverses the Examiner's rejections.

Regarding claims 1, 11-12, 18, and 27, the Examiner noted that Ouimet teaches a computerized merchandizing optimization modeling system (apparatus, device, interface, computer implemented method) to determine the optimum prices/demand/ promotion for product(s) for sale. The Examiner further remarked that the merchandizing optimization system comprises:

- A program (scenario/result processor, scenario controller, apparatus, device) to enable the user to prescribe an optimization scenario and be presented with the determined optimum price/promotion plan after the execution of the optimization scenario (column 3 line 43 through column 4, line 23).

- A sequence of data entry templates presented to the user whereby the user specifies an optimization scenario, including promotional events (column 3 line 48 through column 4 line 15, column 4 line 65 through column 5 line 11).

- An optimum promotion plan based on product demand and cost calculations(column 4, lines 10-14, 16-19, and 42-44)

- A program (input/output processor, scenario controller, apparatus, device) to acquire data relating to the optimization scenario from the user and then later distributes the results to the user in a format consistent with the optimization determination/results (column 3, lines 3-9 and column 4, lines 21-23).

- Considers a cost calculation when optimizing promotion and pricing for profit (column 6 lines 2-5).

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In addition, the Examiner stated that Ouimet does not teach the method of calculating costs via an activity-based costing methodology, but that Morgan discloses an automated activity-based management system (engine, module, program, controller) designed to:

- Calculate product costs (column 20, lines 24-35).

- Specify (enable, input) product information/supplier offers (for example, changes/updates in the cost per unit to purchase product from suppliers) via a template (graphical user interface, organized entry fields) (column 3 line 64 through column 4 line 3, and column 6 lines 43-45).

The Examiner moreover opined that Ouimet and Morgan are in the analogous art of providing financial decision tools to businesses to improve their profitability. The Examiner concluded that it would have been obvious to a person of ordinary skill in the art at the time of invention to combine the teachings of Ouimet and Morgan to determine the optimal price/promotion plan using the more precise activity based costing program coupled to a template for specifying product costs/supplier offers for the advantages of accuracy.

Applicant disagrees with the Examiner's characterization of the teachings of Ouimet and Morgan in view of that taught by the instant application and offers the following points in traversal of the rejection of claim 1. For ease of reference, claim 1 as amended herein is provided below.

1.   An apparatus for determining an optimum promotion plan for merchandising of products for sale, comprising:

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>> a scenario/results processor, configured to enable a user to prescribe an

>>> optimization scenario, and configured to present the optimum promotion plan to said user, wherein the optimum promotion plan is determined by execution of said optimization scenario, and wherein the optimum promotion plan is determined based upon estimated product demand and calculated activity based costs, wherein said calculated activity based costs include fixed and variable costs for the products for sale, said scenario/results processor comprising:

>>> an input/output processor, configured to acquire data corresponding to said

>>>> optimization scenario from said user, and configured to distribute optimization results to said user; and

>>> a scenario controller, coupled to said input/output processor, configured to

>>>> control the acquisition of said data and the distribution of said optimization results in accordance with a promotion plan optimization procedure.

In combination, claim 1 recites an apparatus that determines an optimum promotion plan for merchandising of products for sale. The apparatus has a scenario/results processor that is configured to enable a user to prescribe an optimization scenario, and that is furthermore configured to present the optimum promotion plan to the user. The optimum promotion plan is determined by execution of the optimization scenario. The optimum promotion plan is also determined based upon estimated product demand and *calculated activity based costs*. The calculated activity based costs include *fixed and variable costs for the products for sale*. The scenario/results processor includes an input/output processor and a scenario controller. The input/output processor acquires data corresponding to the optimization scenario from the user, and distributes optimization results to the user. The scenario controller is coupled to the input/output processor, and controls the acquisition of the data and the distribution of the optimization results in accordance with a promotion plan optimization procedure.

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Applicant has reviewed Ouimet and finds that the teachings therein relate to a method for incorporating psychological effects into a demand model for pricing. Ouimet states that an original demand model is modified to include a mechanism to convert actual prices into perceived prices, thus causing the demand model to predict higher demand for certain prices. A user specifies the function that converts from real prices to perceived prices. This modified demand function is then fitted to a sales history to yield the parameters appropriate to its particular form. In addition, Ouimet states that the demand model can be modified to account for promotional effects where user defines a visibility model. which gives the relative increase in demand for an item caused by a promotion, and the cost of the promotion. Accordingly, the demand model is modified to include the effect of increased demand based on the visibility, and a profit model is modified to account for the added cost due to the added visibility. The profit model is then optimized with respect to both prices and promotions. (Abstract)

The Examiner noted that the optimum promotion plan is based on product demand and cost calculations(column 4, lines 10-14, 16-19, and 42-44). Applicant agrees, but notes that the cost calculations refer to the cost of a promotion, not to activity based costs. Ouimet states:

> "a visibility cost function having the form $c_v,(V)$, which gives the cost that a promotion incurs, as a function of the visibility, denoted as V. This quantity is defined as the increase in demand that a promotion incurs, relative to the demand without promotion. (Col. 5, lines 5-9)"

Applicant has searched the teachings of Ouimet and finds that he utterly fails to teach, suggest, or even hint that an optimum promotion plan is determined based upon estimated product demand and calculated activity based costs, where the activity based costs include fixed and variable costs for the products for sale. Ouimet further fails to suggest that his model can be combined with other models that do calculate activity based costs.

Applicant is moreover aware that Morgan discloses an automated activity-based management system for employment by a business organization that has costs associated with its employees, facilities, equipment. and overhead to produce products or provide

services. Morgan, in describing his invention states that "such a business organization typically generates traditional general ledger accounting information and human resources information. This traditional accounting information is used along with information directed to activities, equipment usage and facilities utilization to generate costs associated with activities performed by the organization. A computer workstation with a graphical user interface is used to accept entries of activity information. The activity information and traditional accounting information are fed to a relational database. The information is processed and costs associated with the employee, facilities, equipment, and overhead components off activities are computed. User-definable ad-hoc reports as well as preformated reports for trending, forecasting, comparison, benchmarking, and budgeting purposes are generated." (Abstract)

But Morgan fails to suggest or provide any motivation whatsoever that such activity based costs can be employed along with estimated product demand in a comprehensive optimization scenario to determine an optimum promotion plan. Morgan's teaching is limited to financial accounting scenarios.

The Examiner's assertion Ouimet and Morgan are in the analogous art of providing financial decision tools to businesses to improve their profitability does not imply that the combination of the teachings of the two references is obvious absent some suggestion or motivation in either of the references that they indeed could be combined. In fact, Applicant asserts in the instant application that "[a]n integrated demand/promotion model typically models demand within a set of promotion event constraints (e.g., temporary price reductions, coupons, advertisements, displays, offers of suppliers during certain promotion events, etc.) provided by the category manager for a product or group of products and establishes an promotion scheme for the product or group of products based partially upon the price elasticity of the product or group of products and the objectives of the model analysis." Ouimet is an example of such an integrated demand/promotion model.

Yet, Applicant has noted problems associated with such models in that present day demand/promotion models do not take into account the costs associated with providing a

product for sale and because demand chain costs are not considered, present day models can only determine prices/promotion schemes as a function of demand to maximize sales, or revenue. By providing the present invention, as recited in claim 1, Applicant has provided a solution that overcomes these problems, and others, via an apparatus that is neither alluded to nor suggested by Ouimet or Morgan.

Accordingly, it is respectfully requested that the rejection of claim 1 be withdrawn.

With regard to claims 2-12 and 15, these claims depend from claim 1 and provide further limitations that are neither anticipated nor made obvious by Ouimet, Morgan, or Ouimet and Morgan in combination. Accordingly, Applicant requests withdrawal of the rejections of claims 2-12 and 15.

Claim 18 recites substantially the same limitation as claim 1 with regard to how a promotion plan is generated. In part, "according to modeled market demand for the products and calculated demand chain costs for the products, wherein said calculated demand chain costs include fixed and variable costs for the products.

As noted above in traversal of the rejection of claim 1, Ouimet does not employ demand chain costs, nor does he suggest that they can be employed. His costs are restricted to the cost of a promotion. Furthermore, Morgan does not provide any motivation for one skilled in the art to employ his activity based costs in any type of promotion plan optimization scenario that includes modeled market demand. Accordingly, Applicant requests that the rejection of claim 18 be withdrawn.

With regard to claims 19-27, these claims depend from claim 18 and provide further limitations that are neither anticipated nor made obvious by Ouimet, Morgan, or Ouimet and Morgan in combination. Accordingly, Applicant requests withdrawal of the rejections of claim 19-27.

With regard to claims 2-3 and 20-21, these claims depend from claims 1 and 18, respectively, and provide further limitations that are neither anticipated nor made obvious by Ouimet, Morgan, or Ouimet and Morgan in combination. Accordingly, Applicant requests withdrawal of the rejections of claims 2-12 and 15.

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The Examiner rejected claims 13-14,16-17, and 28-29 under 35 U.S.C. 103(a) as being unpatentable over Ouimet in view of Morgan as applied to claims 1-10 and 18-26 and in further view of Little (1975). Applicant respectfully traverses and notes that claims 13-14,16-17, and 28-29 depend from claims 1 and 18, respectively, and add further limitations that are neither anticipated nor made obvious by Ouimet, Morgan, or Ouimet and Morgan in combination. In view of the arguments supplied in traversal of the rejections of claims 1 and 18, Applicant requests withdrawal of the rejections of claims 13-14,16-17, and 28-29.

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CONCLUSIONS

In view of the arguments advanced above, Applicant respectfully submits that claims 1-
30 are in condition for allowance. Reconsideration of the rejections is requested, and
allowance of the claims is solicited.

Applicant earnestly requests that the Examiner contact the undersigned practitioner by
telephone if the Examiner has any questions or suggestions concerning this amendment,
the application, or allowance of any claims thereof.

I hereby certify under 37 CFR 1.8 that this correspondence is being facsimile transmitted to the
United States Patent and Trademark Office on the date of signature shown below.

Respectfully submitted,
HUFFMAN PATENT GROUP, LLC

/ Richard K. Huffman /

By: _____

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09 / 28 / 2005

Date: _____

Attachments

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